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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 163

THOMAS J. BRADY, *Petitioner,*

vs.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, A CORPORATION,

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF OF THOMAS J. BRADY, PETITIONER.

MARK D. EAGLETON,
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Of Counsel.

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SUPREME COURT OF THE UNITED STATES

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No. 163

THOMAS J. BRADY,

Petitioner,

vs.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, A CORPORATION,

BRIEF OF THOMAS J. BRADY, PETITIONER.

This case is here pending upon writ of certiorari, awarded by this Court on the 8th day of November, 1937, to review a final judgment and opinion of the Supreme Court of Missouri, entered on February 19, 1937 (R. 129-130), and upon which rehearing was entertained (R. 140) but denied on March 24, 1937 (R. 147). The petition for writ of certiorari was filed in this Court on June 22, 1937.

Opinion of the Court Below.

The opinion of the Supreme Court of Missouri, which is here for review, appears at pages 130 to 139, inclusive, of the printed record herein filed, and is reported under the style of "Thomas J. Brady *vs.* Terminal Railroad

Association of St. Louis'' in Volume 102 of the Southwestern Reporter, Second Series, at page 903. The case is not yet reported in the official Missouri reports.

Jurisdiction of This Court.

The action under review having been brought under the Federal Safety Appliance Act of March 2, 1893, c. 196, 27 Stat. 531, as amended (45 U. S. C. A. Section 1 *et seq.*), the jurisdiction of this Court to review the final judgment of the Supreme Court of Missouri is within Section 237 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 937 (28 U. S. C. A. Section 344), permitting this Court to review by certiorari those decisions of the highest courts of the various States wherein a title, right, privilege or immunity is specially set up or claimed under a statute of the United States. Authorities sustaining the jurisdiction are: *Seaboard Air Line R. Co.* v. *Horton,* 233 U. S. 492, 34 S. Ct. 635, 58 L. Ed. 1062; *Minneapolis, St. P. & S. S. M. R. Co.* v. *Goneau,* 269 U. S. 406, 46 S. Ct. 129, 70 L. Ed. 335; *Gulf M. & N. R. Co.* v. *Wells,* 275 U. S. 455, 48 S. Ct. 151, 72 L. Ed. 370; *Atlantic Coast Line Co.* v. *Davis,* 279 U. S. 34, 49 S. Ct. 210, 73 L. Ed. 601.

Statement of the Case.

The Facts.

The facts here involved are practically without dispute, and briefly are as follows:

The respondent Terminal Railroad Association of St. Louis, and the Wabash Railway Company, were, and are, connecting common carriers by railroad, engaged in interstate commerce and transportation (R. 61), and having a connection at Granite City, Illinois, by means of a transfer or interchange track, sometimes referred to in the

evidence as "track No. 11," the "inbound track," or the "receiving track" (R. 15-16, 30).

The petitioner was, at the time of his injury, and for about three and one-half years before that time had been, a car inspector employed by the Wabash Railway Company in its yards at Granite City, Illinois, which included the transfer or interchange track above referred to (R. 15-16), it being his duty to inspect cars hauled into that switch yard by other railroads for transfer to the Wabash (R. 15, 53, 54). Petitioner was injured on November 20, 1927, about 9:00 or 9:30 P. M. (R. 15), while engaged in inspecting a "cut" or "drag" consisting of between fifty and sixty cars, and which was upon the transfer or interchange track referred to above (R. 15, 16, 17, 30). These cars had been hauled, coupled together as a unit or train (R. 28), by the respondent Terminal Railroad Association of St. Louis from St. Louis, Missouri, to Granite City, Illinois, a distance of some ten or twelve miles, and placed by the respondent Terminal Railroad Association of St. Louis upon this particular track, some two or three hours before plaintiff's injury (R. 16, 60). The purpose of respondent Terminal Railroad Association of St. Louis in so moving and placing the cut or drag of cars was, concededly, to tender *them to the Wabash Railway Company* for transfer to, and hauling by, the Wabash (R. 4, 5, 61). At the time the inspection was being made, there were no engines or locomotives attached to the cars (R. 16, 28), and the cut or drag of cars had not been broken up before the inspection, the entire cut or drag being left standing there coupled together just as it was brought in by the respondent Terminal Railroad Association of St. Louis (R. 28-29). In the cut or drag were cars which were moving in interstate commerce, cars containing shipments which were being transported in interstate commerce, and

cars which were destined to foreign cities located in states other than the State of Missouri and the State of Illinois (R. 28, 29, 30).

The petitioner and another car inspector, named Rhine, were inspecting the cars in this cut or drag for the purpose of determining whether the cars were to be accepted or rejected by the Wabash (R. 15, 16, 17, 56). If the inspectors found that the equipment was in a good and safe condition to permit a car to continue its journey, and the car contained no defects in its safety appliances, the car would be marked or carded, and if it was not in such condition, the car would be rejected and taken back by the Terminal Railroad Association of St. Louis, respondent here (R. 17, 54, 56).

Petitioner and Rhine had inspected thirty-five or forty of the cars in the cut prior to petitioner's injury (R. 17). In doing this work, they first inspected the car from the ground, and then went up on the roof or top of the car (R. 17). Petitioner was climbing up the side ladder at the corner of one of the cars in this particular cut or drag, and when he attempted to use the handhold or grabiron on the roof of the car at the top of the ladder to raise himself up onto the top of the car, the handhold, and the latitudinal runningboard to which it was attached, pulled loose and caused him to fall backwards to the ground and sustain injuries (R. 17-23, 50-53). The grabiron or handhold was not secure, and the wood of the latitudinal runningboard, to which the grabiron was attached, was old and rotted out (R. 21-22, 53).

Prior to the petitioner's injury, the cars in this cut or drag had not been accepted by the Wabash (R. 28), the cars having just been placed on the track there for tender to the Wabash (R. 4, 5), and the Wabash not having moved the cars, nor done anything in connection therewith, except to detail petitioner and Rhine to inspect them (R. 28-29).

Petitioner first brought suit for his injuries against his employer, the Wabash Railway Company (R. 50), basing his action upon the Federal Employers' Liability Act (45 U. S. C. A. Sections 51-59) and the Safety Appliance Act (45 U. S. C. A. Sections 1 *et seq.*). He recovered a verdict and judgment in the trial court. That judgment was reversed, on appeal, by the Supreme Court of Missouri (see *Brady* v. *Wabash Railway Co.*, 329 Mo. 1123, 49 S. W. (2d) 24), that court assigning, as its reason for such reversal, that petitioner had failed to make a submissible case against his employer, the Wabash Railway Company, under the Safety Appliance Act, in that the car from which petitioner fell to his injury, although concededly not equipped with a secure grabiron or handhold as required by that act, had not yet been accepted by the Wabash Railway Company, and that that company had not, therefore, "hauled or used" such defective car, nor permitted it to be "hauled or used upon its lines," within the prohibition of the Safety Appliance Act, notwithstanding that the Terminal Railroad Association of St. Louis had hauled the cut or drag of cars a distance of some two miles over the Wabash Railway Company's transfer or interchange track. This court denied certiorari to review that decision of the Missouri Supreme Court (see *Brady* v. *Wabash Railway Co.*, 287 U. S. 619, 53 S. Ct. 20, 77 L. Ed. 538).

The Proceedings.

Following the adverse outcome of his action against his employer as aforesaid, on June 14, 1935 (R. 7) petitioner proceeded with the prosecution of the action which he had meanwhile, on August 17, 1929, instituted in the Circuit Court of the City of St. Louis, Missouri, against the Terminal Railroad Association of St. Louis, the delivering carrier which had tendered to petitioner's employer a car

not equipped with secure grabiron or handhold as required by Section 11 of the Federal Safety Appliance Act (Act of April 14, 1910, c. 160, Section 2; 36 Stat. 298; 45 U. S. C. A. Section 11).

Petitioner's action in the trial court was tried upon a third amended petition (R. 1-4), which alleged that petitioner, his employer the Wabash Railway Company, and the Terminal Railroad Association of St. Louis, were engaged in interstate transportation at the time in question; that petitioner, in the performance of his duties as a car inspector for the Wabash Railway Company, was required to go upon and inspect the cars of a certain interstate freight train to determine whether or not such cars were to be accepted or rejected by the Wabash; that said cars were destined in interstate commerce, having interstate freight therein, and to be further moved in interstate commerce; that, in order to climb upon one of said cars, petitioner used a ladder and grabiron or handhold that was then and there upon said car; that immediately prior to said time, said freight car was hauled and moved by the Terminal Railroad Association of St. Louis and tendered by said Terminal Railroad Association of St. Louis to the Wabash Railway Company, equipped with an insecure grabiron or handhold on the roof of said car; that when petitioner, Thomas J. Brady, took hold of said grabiron, said grabiron became detached from said car, causing petitioner to fall to the ground below, to his injury; that petitioner's said injury occurred as a result of a violation by the Terminal Railroad Association of St. Louis of the Laws of the United States (Act of April 14, 1910, c. 160, Section 2; 36 Stat. 298; 45 U. S. C. A. Section 11), which required that all cars having ladders be equipped also with secure handholds or grabirons on their roofs at the top of said ladders (R. 1-2).

The answer of the Terminal Railroad Association of St.

Louis to the aforesaid third amended petition (R. 4-5) pleaded a general denial; further, that on the occasion mentioned in plaintiff's third amended petition, plaintiff was engaged in his duties as a car inspector, with respect to cars tendered to the Wabash Railway Company by the Terminal Railroad Association of St. Louis, to determine by inspection whether or not cars so tendered were defective as to safety appliances or otherwise, and that as such inspector inspecting cars so tendered to said Wabash Railway Company by the Terminal Railroad Association of St. Louis, plaintiff (petitioner here) was not within the class of persons for whose benefit the Safety Appliance Act was enacted; further, that the risk of the injury sustained by plaintiff (this petitioner) was a necessary incident to his employment as a car inspector by the Wabash; and, further, that plaintiff (this petitioner) was guilty of contributory negligence in grabbing a handhold or grabiron on a car without first testing and trying said handhold or grabiron to determine whether or not it was secure.

The reply of the plaintiff (petitioner here) to the answer (R. 5) was by way of general denial.

Trial was had before the court and a jury and resulted in a verdict and judgment in favor of the petitioner in the sum of fifteen thousand dollars ($15,000.00) (R. 6). An appeal was duly perfected to the Supreme Court of Missouri (R. 7, 113-114), where the judgment was, on February 19, 1937, reversed (R. 129-130), for reasons stated in its opinion (R. 130-139, see, also, *Brady* v. *Terminal Railroad Association of St. Louis* (Mo. Sup.), 102 S. W. (2d) 903).

Thereafter, the proceedings were as hereinbefore set out.

Opinion of the Missouri Supreme Court.

The Missouri Supreme Court, in the course of its opinion (R. 130-139), referred to its earlier opinion in the case of

Brady v. *Wabash Railway Co.*, 329 Mo. 1123, 49 S. W. (2d) 24, and said (R. 133):

> "We determined in plaintiff's former case, *supra*, as the crucial point therein as it is herein, that the Wabash was not 'using' the defective car 'on its line' at the time and place of plaintiff's injury; that is, not using it in the legal sense of the term * * *."

After citing several cases in support of its conclusions, the court continued (R. 133-134):

> "Under those authorities, and for like reasons as in the former case, we now conclude that neither was the Terminal so using or permitting it to be used on its line at that time and place.
>
> "As was stated in the former case 'The statutory criterion is whether the car is "in use" "on its line" within the true purpose and scope of the act.' This car was not; it had temporarily been withdrawn from use. * * * The temporary withdrawal of the car for inspection and to be further kept out of use if its condition so required, had been completed, so far as the Terminal was concerned, before the injury."

It is thus seen that the judgment of the trial court in favor of this petitioner was reversed mainly, if not solely, upon the ground that the car which petitioner was inspecting at the time of his injury was not then being "hauled" or "used" by the Terminal Railroad Association of St. Louis, and that it had been temporarily "withdrawn from use," so as to be not within the prohibition of the Federal Safety Appliance Act.

In this connection, the Supreme Court of Missouri, in its opinion here under review, as well as in its earlier opinion in *Brady* v. *Wabash Railway Company*, 329 Mo. 1123, 49 S. W. (2d) 24 (which is the foundation for the opinion here under review), makes a distinction between the word

"use," as employed in the Federal Safety Appliance Act, and "actual use." The opinions of that court hold that the car in question, although it was shown without dispute to be defective in that it did not have a secure grabiron or handhold such as was required by the Safety Appliance Act, and although it was shown without dispute to be in use by the respondent Terminal Railroad Association for the purpose of making a tender for transfer to the Wabash Railway Company, and in use by the Wabash for the purpose of being inspected to determine whether it would be accepted or rejected, was not "in use" by either of those connecting railroads within the meaning of, and in violation of, the Safety Appliance Act.

Specification of Errors.

The judgment secured by petitioner in the trial court was reversed, and determined against petitioner, by the Supreme Court of Missouri under an erroneous interpretation of the Federal Safety Appliance Act as applied to the facts in this case, in the following particulars:

1. Error in failing and refusing to hold that the train which was being inspected by petitioner, and the cars therein, were in use by the Terminal Railroad Association of St. Louis, in the sense in which that word is employed in the Federal Safety Appliance Act, and in failing and refusing to hold that such use of the train and car in question, with the grabiron or handhold in an insecure condition, constituted a violation of that act.

2. Error in holding that petitioner failed to make a case showing liability of the Terminal Railroad Association of St. Louis under the Federal Safety Appliance Act.

3. Error in holding that the trial court erred in not directing a verdict in favor of the Terminal Railroad Association of St. Louis.

4. Error in holding that the cars of the train, containing shipments then being transported in interstate commerce, which cars had been hauled by the Terminal Railroad Association of St. Louis and placed by it upon the transfer or interchange track of the Wabash Railway Company, a connecting carrier, and there left standing so as to be tendered to the Wabash for further transportation, were not in use, within the meaning of the Federal Safety Appliance Act.

Summary of Argument.

The opinion and decision of the Missouri Supreme Court, complained of, is erroneous for the following reasons:

I.

The car from which petitioner (plaintiff) fell to his injury was but one of some fifty or sixty cars coupled together as a train, which train was in active use in hauling interstate freight, was hauled interstate by the Terminal Railroad Association of St. Louis from St. Louis, Missouri, to Granite City, Illinois, and there was placed by the Terminal Railroad Association of St. Louis upon the Wabash Railway Company's transfer track (sometimes referred to as the "inbound track," "receiving track," and "track No. 11"), for the purpose of tendering the entire train of cars for transfer to, and further hauling by, the Wabash Railway Company. The entire train, and each of the cars therein, was in "use," by the Terminal Railroad Association of St. Louis at the time of petitioner's injury, in the sense in which that word is employed in the Federal Safety Appliance Act, because:

(A) The interstate transportation of the entire train of cars did not end when the Terminal Railroad Association of St. Louis placed the cars upon the Wabash Railway Company's transfer track, although the cars were not then in

motion, such cars not having been delivered to the consignee or consignees. The stoppage of the cars for transfer from one connecting carrier to another was but an incident to their transportation.

Act of Cong., March 2, 1903, c. 976, Sec. 1., 32 Stat. 943, U. S. Code, Title 45, Sec. 8;

Act of Cong., April 14, 1910, c. 160, Sec. 2, 36 Stat. 298, U. S. Code, Title 45, Sec. 11;

Chicago, G. W. R. Co. v. *Schendel,* 267 U. S. 287, 45 S. Ct. 303, 69 L. Ed. 614;

Delk v. *St. Louis & S. F. R. Co.,* 220 U. S. 580, 31 S. Ct. 617, 55 L. Ed. 590;

New York Central R. Co. v. *Marcone,* 281 U. S. 345, 50 S. Ct. 294, 74 L. Ed. 892;

Walsh v. *New York, N. H. & H. R. Co.* (Second Employers' Liability Cases), 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327;

Minneapolis, St. P. & S. S. M. R. Co. v. *Goneau,* 269 U. S. 406, 46 S. Ct. 129, 70 L. Ed. 335;

Great Northern R. Co. v. *Otos,* 239 U. S. 349, 36 S. Ct. 124, 60 L. Ed. 322;

Johnson v. *Southern Pacific R. Co.,* 169 U. S. 1, 25 S. Ct. 158, 49 L. Ed. 363;

Erie R. Co. v. *Russell,* 106 C. C. A. 160, 183 Fed. 722 (writ of error dismissed, 220 U. S. 607, 31 S. Ct. 722, 55 L. Ed. 607);

United States v. *St. Louis S. W. R. Co.,* 106 C. C. A. 230, 184 Fed. 28;

2 Roberts' Federal Liability of Carriers, pages 1435, 1446, Secs. 747, 755;

Baltimore & O. S. W. R. Co. v. *Burtch,* 263 U. S. 540, 44 S. Ct. 165, 68 L. Ed. 433;

St. Louis & S. F. R. Co. v. *Seale,* 229 U. S. 156, 33 S. Ct. 651, 57 L. Ed. 1129;

McNeill v. *Southern Ry. Co.*, 202 U. S. 543, 26 S. Ct. 722, 50 L. Ed. 1142;

Rhodes v. *Iowa*, 170 U. S. 412, 18 S. Ct. 664, 42 L. Ed. 1088.

(B) Neither the temporary halt of the train on the Wabash transfer track, nor the inspection incidental to the transfer of the entire train of cars to the Wabash Railway Company, took the train, or the cars therein, out of service or use.

Authorities cited, *supra*.

II.

The fact that the grabiron or handhold on the roof of the car at the top of the side ladder pulled loose, under petitioner's (plaintiff's) weight, when he attempted to use it in the ordinary manner to get onto the top of the car, together with petitioner's description of its condition, sufficiently shows that it was insecure, within the meaning of Section 11 of the Federal Safety Appliance Act.

Davis v. *Wolfe*, 263 U. S. 239, 44 S. Ct. 64, 68 L. Ed. 284 (Affirming *Wolfe* v. *Payne*, 294 Mo. 170, 241 S. W. 915);

Swinson v. *Chicago, St. P. M. & O. R. Co.*, 294 U. S. 529, 55 S. Ct. 517, 79 L. Ed. 1041;

Didinger v. *Pennsylvania R. Co.*, 39 F. (2d) 798.

III.

The petitioner (plaintiff) having been injured as a proximate result of the failure of the respondent Terminal Railroad Association to comply with a requirement of the provision of Section 11 of the Safety Appliance Act (U. S.

Code, Title 45, Sec. 11), he was entitled to recover from respondent for such injuries.

Swinson v. *Chicago, St. P. M. & O. R. Co., supra;*

Fairport, C. & E. R. Co. v. *Meredith,* 292 U. S. 589, 54 S. Ct. 826, 78 L. Ed. 1146;

Davis v. *Wolfe,* 263 U. S. 239, 44 S. Ct. 64, 68 L. Ed. 284 (Affirming *Wolfe* v. *Payne,* 294 Mo. 170, 241 S. W. 915);

Louisville & N. R. Co. v. *Layton,* 243 U. S. 617, 37 S. Ct. 456, 61 L. Ed. 931.

Argument.

The Supreme Court of Missouri erred in failing to hold that, upon the undisputed facts, there was a violation by the Terminal Railroad Association of St. Louis of Section 11 of the Federal Safety Appliance Act, in that said Terminal Railroad Association used a freight car with an insecure handhold or grabiron on the roof at the top of the ladder, and that plaintiff was entitled to recover damages from said Terminal Railroad Association for his injuries which proximately resulted therefrom.

I.

Section 11 of the Safety Appliance Act, upon which petitioner founded his action in the Missouri courts, is as follows:

"SEC. 11. *Safety Appliances Required For Each Car —When Hand Brakes May be Omitted*—It shall be unlawful for any common carrier subject to the provisions of this chapter to *haul,* or *permit to be hauled, or used on its lines,* any car subject to the provisions of this chapter not equipped with appliances herein provided for to wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped

with such ladders and running boards, *and all cars having ladders shall also be equipped with secure handholds or grabirons on their roofs at the tops of such ladders:* Provided, that in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose" (Apr. 14, 1910, c. 160, Sec. 2, 36 Stat. 298). 45 U. S. C., Sec. 11.

It is significant that throughout the various sections of the Safety Appliance Act there appear specific and pointed provisions against the *use* of cars or trains without the required equipment, as well as against the *hauling* thereof, as distinctly appears from the appendix to this brief. The particular section in question forbids the carrier to *haul or permit to be hauled or used on its line* any car not equipped with a handhold or grabiron on the roof at the top of the ladders.

In the determination of whether the defective car which resulted in petitioner's (plaintiff's) injury was being "hauled or used" by respondent (defendant), it should be recalled that the evidence in this case showed without dispute that this car, together with some fifty or sixty other cars, a short time before had been hauled interstate by the respondent and placed by it upon the transfer track in question for the purpose of tendering all of the cars to the Wabash Railway Company for further transportation. All of these cars were coupled together as a train, and many of them were loaded with freight destined for various points within and without the State of Illinois. The transfer of the train of cars from the respondent to its connecting carrier, the Wabash Railway Company, of necessity required that the train of cars be stopped at the transfer point, that the respondent's motive power be detached therefrom, and that the Wabash Railway Company's motive power be attached thereto. The temporary halt of the train on the Wabash

transfer track for these purposes, obviously, did not take the cars out of "service," or out of "use." Such temporary halt was but a necessary step in the progress and transportation of the cars and the freight contained therein.

Incidental to this necessary temporary halting of the cars, it was the custom and practice of the Wabash Railway Company (as is the general custom among railroads), to inspect the cars tendered to it for transfer. Obviously, this incidental act, which was done during the performance of the necessary mechanics of effectuating the transfer of these cars from the respondent to the Wabash, had no effect upon the character of the cars with reference to their being in "use" or in "service" by the respondent.

This is manifest from the fact that, if these cars were in the course of interstate transportation by the respondent alone, and respondent had brought its train to a stop on a siding for the purpose of changing locomotives on the train and inspecting the cars to determine whether they were in condition to proceed on their journey, or for the purpose of such an inspection alone, and with the intention to continue with the interstate transportation of the train as soon as the change of locomotives and inspection, or such inspection alone, was completed in conformity with intelligent, practical railroading, it would not be questioned for a moment that such a train was then in use.

The delay in making the inspection of these cars, until some three hours after they had been placed upon the transfer track by the respondent, also does not change the legal status of the cars with reference to their being in use. If the Wabash Railway Company had had car inspectors and motive power to make the inspection and transfer at the very instant of tender, the cars would still only be serving the purposes of the two railroads involved, namely, the respondent Terminal Railroad Association of St. Louis making the tender, and the Wabash Railway Company accepting or

rejecting the cars. Practical railroading does not permit railroad companies to have inspectors and motive power available at every instant when cars are sent into its yards by other railroads for transfer. Inspectors and motive power employed for this purpose are busy throughout the hours of the day. They go from one group of cars tendered to them to another group of such cars. The mere fact that they cannot conveniently get to a certain group for two or three hours does not lend color to the statement that the cars in that group, while awaiting the arrival of the inspectors and the motive power, or either, are withdrawn from service or use.

Obviously, then, when the injury to petitioner (plaintiff) occurred, the cars were in active use, in the furtherance of respondent's business and transportation of them, and under the authorities they were in "use" in the sense in which that word is employed in the Safety Appliance Act.

The principles here involved are not new to this Court, although they have never been applied to a state of facts identical with those here involved.

In *Johnson* v. *Southern Pacific R. Co.*, 196 U. S. 1., 25 S. Ct. 158, 49 L. Ed. 363, this Court held that a dining car regularly used in interstate traffic, while waiting on a siding to be picked up and put into the next west-bound passenger train to pass that siding, was being "used in moving interstate traffic," within the meaning of that phrase as employed in the original Safety Appliance Act (March 2, 1893, c. 196, Sec. 2, 27 Stat. 531).

In *Delk* v. *St. Louis & S. F. R. Co.*, 220 U. S. 580, 31 S. Ct. 617, 55 L. Ed. 590, this Court had before it a case in which a car containing an interstate shipment was found by the railroad company to be defective, and was placed upon a switch track, known as the "dead track," to await repairs. In undertaking to move other cars off this switch track, it became necessary to make a coupling between this car and

another, and while attempting so to do, the plaintiff was injured as a result of the defective safety appliances upon the car. The defendant railway company there claimed that the defective car, having been upon the "dead track" awaiting repairs for some twenty-seven or twenty-eight hours previous to the plaintiff's injury, was not "in use" in interstate commerce by the defendant, but had been withdrawn from service. This Court, adopting the language of the Circuit Court of Appeals on a previous hearing, with reference to such contention said (220 U. S. 584 et seq.):

> "* * * we are inclined to think otherwise. Its cargo had not yet reached its destination and was not then ready for the delivery to the consignee wherewith the commerce would have ended. *Its stoppage in the yard was an incident to the transportation.* * * * After the coupler became defective and could not be coupled without going between the ends of the cars, it became unlawful for the railroad company to haul it, or permit it to be hauled, or used, on its line. It then became the duty of the railroad company to withdraw the car from use, and have it repaired to conform with the law before using it further. It did not do this. * * * The car was defective, liable at any time to cause an accident, and it could not be kept in use at the constant risk of a serious accident, either upon the excuse that it would be inconvenient to withdraw it from service, or that the company had sent for the required appliance, and would repair the car when it should be received. *This is a case peculiarly within the provisions of the* (*safety appliance*) act." (Emphasis and parenthetical portion ours.)

In *Chicago G. W. R. Co.* v. *Schendel,* 267 U. S. 287, 45 S. Ct. 303, 69 L. Ed. 614, the facts were that a drawbar had pulled out of a car, and the car was thereupon chained to the car immediately ahead. The train was then pulled onto an adjacent siding and stopped, with the intention of detaching

the damaged car and leaving it there to be repaired. After the defective car had been placed stationary upon the siding, and the engine cut off it, the car ran slowly down the gentle grade of the siding, and the chain on the car caught plaintiff's decedent, causing him to suffer fatal injuries. It was contended by the railroad company that the case was one not brought within the Safety Appliance Act by the facts, in that the defective car had come to rest on the side track and had ceased to be "used" within the meaning of the Act, at the time plaintiff's decedent was injured. This Court, in ruling adversely to such contention, distinctly said (267 U. S. l. c. 219):

> "Under the circumstances disclosed, we think it clear that the use, movement or hauling of the defective car, within the meaning of the statute, had not ended at the time of the accident."

In *New York Central R. Co.* v. *Marcone,* 281 U. S. 345, 50 S. Ct. 294, 74 L. Ed. 892, this Court distinctly held that an engine, used to haul interstate trains, but which had been placed by itself on a track just outside one of the engine stalls of a roundhouse for inspection and greasing, was not withdrawn from use or service, but, on the contrary, was then being employed in interstate transportation or work so closely connected therewith as to be practically a part thereof.

In *Walsh* v. *New York, N. H. & H. R. Co.,* 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327 (one of the Second Employers' Liability Cases), this Court held that a car which had been placed upon a side track for repair, and which was being repaired by plaintiff's intestate at the time of the injury resulting in his death, was not withdrawn from service or use so as to be out of interstate commerce.

To this same general effect are *Great Northern Ry. Co.* v. *Otos,* 239 U. S. 349, 36 S. Ct. 124, 60 L. Ed. 322; *Erie R. Co.* v.

Russell, 106 C. C. A. 160, 183 Fed. 722 (writ of error dismissed 220 U. S. 607, 31 S. Ct. 722, 55 L. Ed. 607); and *United States* v. *St. Louis S. W. R. Co.,* 106 C. C. A. 230, 184 Fed. 28.

The foregoing authorities make it clear not only that the respondent Terminal Railroad Association's "use" of the car involved in the instant case had not been terminated prior to plaintiff's injury by the car being placed upon the transfer track, but that the "hauling" of said car by the respondent, within the common meaning of the verb "haul," and the provisions of the Federal Safety Appliance Act, had not been terminated. This car had not, prior to plaintiff's injury, reached its destination, and been delivered by respondent to the consignee thereof, so as to terminate its interstate transportation. It is well settled that the transportation of an interstate car is not terminated until it has actually been delivered to the consignee. 2 Roberts' Federal Liability of Carriers, pages 1435, 1446, Secs. 747, 755; *Baltimore & O. S. W. R. Co.* v. *Burtch,* 263 U. S. 540, 44 S. Ct. 165, 68 L. Ed. 433; *St. Louis & S. F. R. Co.* v. *Seale,* 229 U. S. 156, 33 S. Ct. 651, 57 L. Ed. 1129; *McNeill* v. *Southern Ry. Co.,* 202 U. S. 543, 26 S. Ct. 722, 50 L. Ed. 1142; and *Rhodes* v. *Iowa,* 170 U. S. 412, 18 S. Ct. 664, 42 L. Ed. 1088.

At the time this train of some fifty or sixty cars was placed upon the transfer track by the respondent Terminal Railroad Association of St. Louis, it was the intention of both the respondent and the Wabash Railway Company, and within the immediate contemplation of both, that the cars should be "hauled and used" by the Wabash in order that their transportation might be completed, because, concededly, some of these cars were destined to cities located in States other than Missouri and Illinois (R. 30). Obviously, therefore, the transportation of these cars had not been terminated, but had been delayed temporarily to effectuate a transfer or interchange and an inspection incidental thereto, and these cars were not withdrawn from service or use.

In the petitioner's case against his employer, the Wabash Railway Company, the Supreme Court of Missouri held that this train of cars was not being "hauled or used" by the Wabash Railway Company in that Wabash had not accepted them at the time of petitioner's injury. (*Brady* v. *Wabash Ry. Co.*, 329 Mo. 1123, 49 S. W. (2d) 24, 27), and that the use, movement or hauling of the cars by the Wabash had not commenced. In its later decision in the petitioner's case against the respondent Terminal Railroad Association of St. Louis (*Brady* v. *Terminal R. Assn. of St. Louis* (Mo. Sup.), 102 S. W. (2d) 903), which is the proceeding here being reviewed, the Supreme Court of Missouri, basing its decision upon the opinion in petitioner's earlier case against his employer, ruled that the use, movement or hauling of the train of cars by the respondent had terminated prior to petitioner's injury, when respondent placed the train of cars in a stationary condition upon the transfer track. By its two opinions, petitioner respectfully submits that the Supreme Court of Missouri has reached a paradoxical, if not indefensible, result. If that court is right in both of its opinions, then the car upon which petitioner was injured was, at the time of his injury, not being hauled or used by anyone and was not in the service of anyone. And, this would be true not only of the car upon which petitioner was injured, but would also be true of each and every one of the other fifty or sixty cars in the train which had been placed on the transfer track by the respondent. All of these cars were placed there, as a unit, at the same time and for the same purpose. The inspection to be made by the petitioner, or the Wabash Railway Company, applied equally to all cars. The car upon which petitioner was working at the time of his injury was no more withdrawn from service or use than those cars to which it was coupled and attached. Of necessity, the Supreme Court of Missouri had to hold that all of

the cars tendered by the respondent Terminal Railroad Association of St. Louis to the Wabash Railway Company, as aforesaid, were withdrawn from service and use, in order to reach the results stated in the two opinions. A mere statement that fifty or sixty cars, which were being transported in interstate commerce and which had not reached their destination, and which had not been bad ordered for any reason or placed upon any bad order or repair track, but which had definitely been placed upon a general switch track for transfer from one connecting carrier to another, with the intention that they resume their journey upon the completion of the necessary mechanics to effectuate such transfer (including an inspection incidental to such transfer), should suffice to refute a holding that such cars were not in service or use, and should clearly demonstrate the manifest error in the opinions of the Missouri Supreme Court.

The effect of the two opinions of the Missouri Supreme Court is to rule that the question as to whether the cars were in "use," within the meaning of that word as employed in the Safety Appliance Act, is to be determined by whether such cars were in motion or stationary. This is, of course, directly in conflict with the decision in *Minneapolis, St. P. & S. S. M. R. Co.* v. *Goneau,* 269 U. S. 406, 46 S. Ct. 129, 70 L. Ed. 335, wherein this Court said (269 U. S. l. c. 409):

> "The Railway Company contends that the evidence did not bring the case within the Safety Appliance Act or warrant its submission to the jury under that Act; the argument being, in substance, that the defective car, being motionless at the time of the accident, was not then in use; * * *
>
> "We cannot sustain this contention. Under the circumstances indicated it is clear that the use of the defective car had not ended at the time of the accident, although it was then motionless. * * *"

In the light of the decisions of this Court which we have heretofore referred to, the facts that the transportation of these cars had not been terminated, but had been delayed temporarily to effectuate a transfer or interchange from respondent to the Wabash, and the cars had not yet been accepted by the Wabash, conclusively demonstrate that the cars were still being "hauled" by the respondent Terminal Railroad Association of St. Louis at the time of petitioner's injury, within the common meaning of the verb "haul," and within the meaning of the Federal Safety Appliance Act, although such cars were not then actually in motion.

Even if the "hauling" of this train of cars by respondent Terminal Railroad Association of St. Louis could be limited to actual movement, and the "hauling" thereof by respondent deemed to have been terminated some three hours previous to petitioner's injury when the respondent placed the cars upon the transfer track, we fail utterly to see how it can be ruled that their "use" by respondent had been so terminated. It should not be overlooked that the verb "use" is a word of extremely broad signification, meaning, generally, "to employ for the accomplishment of a purpose," and is defined in Webster's International Dictionary as "to make use of; to convert to one's service; to avail one's self of; to employ." It is conceded that this entire train of fifty or sixty cars, including the car upon which petitioner was injured, was placed by the respondent Terminal Railroad Association of St. Louis upon the transfer track for the purpose of tendering all of those cars for transfer to, and further transportation by, the Wabash. *Manifestly, therefore, the entire train of cars, and each car in the train, was in use by, and in the service of, the respondent for the purpose of making such tender and effectuating a transfer from the respondent to the Wabash for the further transportation of the cars,* all of which were still, concededly, in respondent's possession while the tender was

being made, the cars not having been accepted by the Wabash (R. 28). Manifestly, too, the decision of the Missouri Supreme Court in *Brady* v. *Wabash Ry. Co.*, 329 Mo. 1123, 49 S. W. (2d) 24, to the contrary notwithstanding, these cars were then and there being "used" by the Wabash for the purpose of making an inspection incidental to such tender and the effectuation of such transfer.

What we have heretofore said is not in the least in conflict with the decisions in *Baltimore & O. R. Co.* v. *Hooven*, 297 Fed. 919; *McCalmont* v. *Pennsylvania R. Co.*, 283 Fed. 726; *Sherry* v. *Baltimore & O. R. Co.*, 30 F. (2d) 487, and *New York, etc. R. Co.* v. *Kelly*, 70 F. (2d) 548, which the Supreme Court of Missouri evidently considered as binding and controlling. Suffice it to say that, in each of the cases last cited, the accident occurred *after the cars had been sent to repair shops or placed upon dead tracks used solely for repair purposes.* Typical of those cases is the pronouncement in *New York, etc., R. Co.* v. *Kelly*, 70 F. (2d) 548, 549, to the effect that

> "It is admitted that the car was undergoing repairs, *on a repair track which was not used for general switching*, and which was locked so as to preclude the entry of cars while repairs were being made * * *." (Emphasis ours.)

The distinction between those cars and the instant case is manifest because, in the instant case, as we have heretofore indicated, the transfer track upon which the cars here involved were placed was not a "dead track," and was not used for repair purposes, but was, as its name implies, on the contrary, *a track used for general switching in the transfer or interchange of cars* between the two connecting carriers, the respondent and the Wabash Railway Company. Furthermore, the cars here in question were not placed upon this track for "repair purposes,"

but were placed there solely for the purpose of effectuating a transfer or interchange from the respondent to the Wabash so that the transportation of the cars could continue, the inspection by the Wabash being merely incidental to such transfer. The distinction which we here make was clearly made in *Erie R. Co.* v. *Russell*, 106 C. C. A. 160, 183 Fed. 722 (writ of error dismissed 220 U. S. 607, 31 S. Ct. 722, 55 L. Ed. 607).

From the foregoing, we submit that it is manifest that the car upon which petitioner was injured, was, at the time of his injury, being "hauled" or "used" by the respondent Terminal Railroad Association of St. Louis within the meaning of the Federal Safety Appliance Act.

II.

The evidence established conclusively, and without dispute, that the petitioner, on the occasion in question, was using the handhold or grabiron on the roof of the car at the top of the ladder in a normal way, for the purpose for which it was provided. It pulled loose and caused him to fall. Thereafter, it was discovered that it was insecure, due to the decayed condition of the wood through which the bolts extended. The evidence further established that the injury was caused by the insecurity of the handhold or grabiron. Obviously the evidence was sufficient to establish this element of the petitioner's case.

III.

The clearly defined Congressional purpose in the enactment of the original Safety Appliance Act (March 2, 1893, c. 196, 27 Stat. 531), and the amendments thereto, appear in the titles of those enactments which declare them to be acts "to promote the safety of employes and travelers upon railroads," etc. It has been held that such humanitarian

purpose of these enactments "should not be frittered away by judicial construction" (*United States* v. *Chicago, M. & St. P. R. Co.*, 149 Fed. 486, Syllabus 2).

This Court, in the recent case of *Swinson* v. *Chicago, St. Paul, M. & O. R. Co.*, 294 U. S. 529, 531, 55 S. Ct. 517, 79 L. Ed. 1041, 1043, said:

> "The Safety Appliance Act has been liberally construed so as to give a right of recovery *for every injury the proximate cause of which was a failure to comply with a requirement of the act.*" (Emphasis ours.)

And, in ruling that the benefits and protections resulting from duties imposed by the Safety Appliance Act are not confined to "employes and travelers upon railroads," but are extended to any person to whose safety the enactment of the act actually contributes, it was held by this Court in *Fairport, C. & E. R. Co.* v. *Meredith*, 292 U. S. 589, 54 S. Ct. 826, 78 L. Ed. 1446, that a traveler on the highway could recover for injury resulting from failure to maintain in usable condition the power brakes required by the Safety Appliance Act. Applying these considerations to the present case, it is apparent that the primary purpose of the requirements of the Safety Appliance Act here involved, that each car "requiring secure running-boards be equipped" therewith, and that each car having a ladder be equipped with "secure handholds or grabirons" on the roof of the car at the top of the ladder, was to provide employes who might, in the course of their duties, be required to go upon the roofs of such cars, with safe and secure appliances so that they could safely ascend to, and descend from, such roofs.

That the petitioner in the instant case was a railroad employe, and that his duties required him to go upon the roof of the car in question, are beyond controversy. Accord-

ingly, petitioner came directly within the general class of persons named in the title and every part of the Safety Appliance Act as being, and intended to be, protected by the provisions of that act, and it became and was the absolute duty of the respondent Terminal Railroad Association of St. Louis to comply with such provisions in order to protect the life and limb of this petitioner.

The mere fact that the petitioner was a car inspector does not take him out of the class of employes protected by, and included within, the provisions of the Safety Appliance Act.

In the first place, there exists in the Safety Appliance Act no provision excluding car inspectors from its benefits.

In the second place, the nature or character of the work being done by the employe is immaterial, for, as this Court said in *Louisville & N. R. Co.* v. *Layton*, 243 U. S. 617, 621, 37 S. Ct. 456, 61 L. Ed. 931, 933:

> "• • • the liability in damages to employes for failure to comply with the law springs from it being made unlawful to use cars not equipped as required—not from the position the employe may be in or the work which he may be doing at the moment when he is injured. This effect can be given to the acts and their wise and humane purpose can be accomplished only by holding, as we do, that carriers are liable • • • in damages whenever the failure to obey the safety appliance laws is the proximate cause of injury • • • ."

To this same general effect are *Davis* v. *Wolfe*, 263 U. S. 239, 44 S. Ct. 64, 68 L. Ed. 284; and *Swinson* v. *Chicago, St. P. M. & O. R. Co.*, 294 U. S. 529, 55 S. Ct. 517, 79 L. Ed. 1041.

In the third place, the nature of the duty imposed by the section of the Safety Appliance Act here involved, and the benefits resulting from its performance, so obviously con-

tribute to the safety of car inspectors that it is hardly probable that Congress could have contemplated that the act would be inapplicable to the promotion of the safety of that particular class of railroad employees. See *Fairport, C. & E. R. Co.* v. *Meredith*, 292 U. S. 589, 54 S. Ct. 826, 78 L. Ed. 1146. We venture that the use of the running-boards and grabirons or handholds on the roofs of cars by car inspectors is, probably, the predominant and majority use of those particular safety appliances. Although other classes of trainmen do make extensive use of the lower part of the said ladders in switching operations, and in getting to the brake platforms, which are not on the roofs of the cars, and although they do make some use of the longitudinal running-boards on the tops of the cars, they do not, ordinarily, have occasion to use each grabiron on the roof of each car in a cut or string of cars, while a car inspector, of necessity, uses each ladder of each car, together with each grabiron on the roof at the top of such ladder, in making a proper inspection. We believe that it is only reasonable to conclude that the promotion of the safety of car inspectors is a result so readily perceivable that it lies directly within the purview of the requirements that secure running-boards and handholds or grabirons be attached to the roofs of cars at the top of the ladders. That car inspectors need the protection of running-boards on the roofs of cars, and handholds or grabirons on the roofs of cars at the tops of the ladders on the cars is, to us, so obvious that it cannot be said that those particular safety appliances were not intended for the protection of that class of railroad employes. The promotion of the safety of persons who were required to go upon the roofs of cars being the purpose of these particular provisions of the statute, it necessarily follows that anyone whose business calls him to be upon the roof of a car has a right to complain if the

carrier fails to comply with its statutory duty and such failure results in injury to that person.

Conclusion.

From the foregoing, we submit that it appears clearly from the facts in this case that the car from which petitioner fell was in use by the respondent Terminal Railroad Association of St. Louis at the time of petitioner's injury; that it was not equipped with a secure handhold at the top of the ladder, and that by reason thereof the handhold became detached and caused petitioner to fall and be injured; that petitioner was within the class of persons intended to be, and in fact being, protected by the provisions of the Safety Appliance Act; and that, under the interpretation of that act adopted by this Court, the petitioner's right of recovery upon such showing was complete.

It consequently follows that the Supreme Court of Missouri erred in reversing the judgment secured by this petitioner on the theory that no violation of the Federal Safety Appliance Act by respondent was shown, and that petitioner was not entitled to recover. We, therefore, respectfully submit that this Honorable Court should reverse the judgment and decision of the Supreme Court of Missouri, in order that the errors therein may be corrected, and in order that petitioner may receive the benefits of the Federal Safety Appliance Act as that Act is construed and applied by this Court.

Respectfully submitted,

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APPENDIX.

Federal Safety Appliance Act.

We set out below, for the convenience of the Court in reference, various sections of the Federal Safety Appliance Act as the same appear in the United States Code, parts of which we have emphasized:

"SECTION 1. *Driving-wheel brakes and appliances for operating train-brake system.*—It shall be unlawful for any common carrier engaged in interstate commerce by railroad *to use on its line* any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or *to run any train in such traffic* that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose." (Mar. 2, 1893, c. 196, Sec. 1, 27 Stat. 531). 45 U. S. C., Sec. 1.

"SEC. 2. Automatic couplers.—It shall be unlawful for any common carrier engaged in interstate commerce by railroad *to haul or permit to be hauled or used on its line* any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars." (Mar. 2, 1893, c. 196, Sec. 2, 27 Stat. 531). 45 U. S. C., Sec. 2.

"SEC. 3. *Refusal of insufficiently equipped cars from connecting lines.*—When any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section 1 of this chapter, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this chapter, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this chapter." (Mar. 2, 1893, c. 196, Sec. 3, 27 Stat. 531). 45 U. S. C., Sec. 3.

"SEC. 4. *Grabirons or handholds for security in coupling and uncoupling cars.*—Until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company *to use* any car in interstate commerce that is not provided with secure grabirons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars." (Mar. 2, 1893, c. 196, Sec. 4, 27 Stat. 531). 45 U. S. C., Sec. 4.

"SEC. 5. *Standard height of drawbars for freight cars; noncomplying cars excluded from traffic.*—No freight cars, either loaded or unloaded, *shall be used* in interstate traffic which do not comply with the prescribed standard as to height of drawbars." (Mar. 2, 1893, c. 196, Sec. 5, 27 Stat. 531). 45 U. S. C., Sec. 5.

"SEC. 6. *Failure to equip cars as provided; duty of district attorneys and Interstate Commerce Commission; exceptions from operation of provisions.*—Any common carrier engaged in interstate commerce by railroad *using* any locomotive engine, *running* any train, *or hauling or permitting to be hauled or used on its line* any car in violation of any of the preceding provisions of this chapter, shall be liable to a penalty of $100 for each and every such violation. * * *" (Mar. 2, 1893, c. 196, Sec. 6, 27 Stat. 532; Apr. 1, 1896, c. 87, 29 Stat. 85). 45 U. S. C., Sec. 6.

"SEC. 7. *Assumption of risk by employes.*—Any employe of any common carrier engaged in interstate commerce by railroad who may be injured by any locomotive, car or train *in use* contrary to the provision of this chapter shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car or train had been brought to his knowledge." (Mar. 2, 1893, c. 196, Sec. 8, 27 Stat. 532). 45 U. S. C., Sec. 7.

"SEC. 8. *Provisions of Chapter Extended.*—The preceding provisions and requirements of this chapter shall be held to apply to common carriers by railroads in the territories and the District of Columbia and shall apply

in all cases, whether or not the couplers brought together are of the same kind, make or type; and the provisions and requirements relating to train brakes, automatic couplers, grab irons and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars and similar vehicles *used* on any railroad engaged in interstate commerce, and in the territories and the District of Columbia, and to all other locomotives, tenders, cars and similar vehicles *used* in connection therewith, * * *." (Mar. 2, 1903, c. 976, Sec. 1, 32 Stat. 943). 45 U. S. C., Sec. 8.

"SEC. 11. *Safety Appliances Required for Each Car —When Hand Brakes May Be Omitted.*—It shall be unlawful for any common carrier subject to the provisions of this chapter *to haul,* or *permit to be hauled, or used on its line,* any car subject to the provisions of this chapter not equipped with appliances herein provided for, to wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, *and all cars having ladders shall also be equipped with secure handholds or grab irons on their roofs at the tops of such ladders;* Provided, that in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose." (Apr. 14, 1910, c. 160, Sec. 2, 36 Stat. 298). 45 U. S. C., Sec. 11.

"SEC. 13. *Penalty for Using Car Not Equipped as Provided—Hauling Car for Repairs Where Equipment Becomes Defective—Liability for Death or Injury of Employe—Use of Chains Instead of Drawbars.*—Any common carrier subject to this chapter *using, hauling, or permitting to be used or hauled on its line,* any car subject to the requirements of this chapter not equipped as provided in this chapter, shall be liable to a penalty of $100 for each and every such violation, to be recovered as provided in section 6 of this chapter: Provided, that where any car shall have been properly

equipped, as provided in this chapter, and such equipment shall have become defective or insecure *while such car was being used by such carrier upon its line of railroad,* such car may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available point where such car can be repaired, without liability for the penalties imposed by this section or section 6 of this chapter, if such movement is necessary to make such repairs and such repairs cannot be made except at such repair point; *and such movement or hauling of such car shall be at the sole risk of the carrier, and nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employe caused to such employe by reason of or in connection with the movement or hauling of such car with equipment which is defective or insecure or where it is not maintained in accordance with the requirements of this chapter;* and nothing in this proviso shall be construed to permit the hauling of defective cars by means of chains instead of drawbars, in revenue trains or in association with other cars that are commercially used, unless such defective cars contain live stock or 'perishable' freight." (Apr. 14, 1910, c. 160, Sec. 4, 36 Stat. 299). 45 U. S. C., Sec. 13.

"SEC. 14. *Liability for Using Car With Defective Equipment, Except as Specified.*—Except that, within the limits specified in the preceding section of this chapter, the movement of a car with defective or insecure equipment may be made without incurring the penalty provided by the statutes, but shall in all other respects be unlawful, nothing in sections 11, 12 and 13 of this chapter shall be held or construed to relieve any common carrier, the Interstate Commerce Commission or any United States Attorney from any of the provisions, powers, duties, liabilities or requirements heretofore set out in this chapter; and, except as aforesaid, all of such provisions, powers, duties, requirements and liabilities shall apply." (Apr. 14, 1910, c. 160, Sec. 5, 36 Stat. 299.) 45 U. S. C., Sec. 14.